

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TODD KREISLER,

03812 Civ. 10 (LTS)

Plaintiff,

-against-

**ANSWER AND**  
**JURY DEMAND**

FRESH SUBWAY 62, LLC,  
a New York limited liability company,  
d/b/a SUBWAY,

Defendant.

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Defendant, FRESH SUBWAY 62, LLC, by and through its attorneys, **RUTHERFORD & CHRISTIE, LLP**, as and for its Answer to the Complaint of the plaintiff herein, respectfully set forth as follows, upon information and belief:

**JURISDICTION AND PARTIES**

FIRST: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as "1" of the plaintiff's Complaint and respectfully refers all questions of law to this Honorable Court.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as "2" of the plaintiff's Complaint and respectfully refers all questions of law to this Honorable Court.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as "3" of the plaintiff's Complaint

FOURTH: Denies each and every allegation contained in the paragraph designated as "4" of the plaintiff's Complaint but admits that FRESH SUBWAY 62, LLC, is a New York limited liability company.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as "5" of the plaintiff's Complaint and refers all questions of law to this Honorable Court.

**COUNT I - VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT**

SIXTH: Denies each and every allegation contained in the paragraph designated as "6" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "6" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

SEVENTH: Denies each and every allegation contained in the paragraph designated as "7" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "7" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

EIGHTH: Denies each and every allegation contained in the paragraph designated as "8" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "8" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

NINTH: Denies each and every allegation contained in the paragraph designated as "9" of the plaintiff's Complaint.

TENTH: Denies each and every allegation contained in the paragraph designated as "10" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "10" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

ELEVENTH: Denies each and every allegation contained in the paragraph designated as "11" of the plaintiff's Complaint.

TWELFTH: Denies each and every allegation contained in the paragraph designated as "12" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "12" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

THIRTEENTH: Denies each and every allegation contained in the paragraph designated as "13" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "13" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

FOURTEENTH: Denies each and every allegation contained in the paragraph designated as "14" of the plaintiff's Complaint.

FIFTEENTH: Denies each and every allegation contained in the paragraph designated as "15" of the plaintiff's Complaint.

SIXTEENTH: Denies each and every allegation contained in the paragraph designated as "16" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "16" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

## **COUNT II - VIOLATIONS OF THE NEW YORK CITY HUMAN RIGHTS LAW**

SEVENTEENTH: Denies each and every allegation contained in the paragraph designated as "17" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "17" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

EIGHTEENTH: Denies each and every allegation contained in the paragraph designated as "18" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "18" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

NINETEENTH: As and for an answer to paragraph "19" of the plaintiff's Complaint, defendant repeats, reiterate and reallege each and every response to paragraphs "1" through "18" above with the same force and effect as if set forth herein at length.

### **COUNT III - VIOLATIONS OF THE NEW YORK STATE HUMAN RIGHTS LAW**

TWENTIETH: Denies each and every allegation contained in the paragraph designated as "20" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "20" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

TWENTY-FIRST: Denies each and every allegation contained in the paragraph designated as "21" of the plaintiff's Complaint.

TWENTY-SECOND: As and for an answer to paragraph "22" of the plaintiff's Complaint, defendants repeat, reiterate and reallege each and every response to paragraphs "1" through "21" above with the same force and effect as if set forth herein at length.

### **ATTORNEYS' FEES AND COSTS**

TWENTY-THIRD: Denies each and every allegation contained in the paragraph designated as "23" of the plaintiff's Complaint.

**DAMAGES**

TWENTY-FOURTH: Denies each and every allegation contained in the paragraph designated as "24" of the plaintiff's Complaint.

TWENTY-FIFTH: Denies each and every allegation contained in the paragraph designated as "25" of the plaintiff's Complaint, except Defendant neither admits nor denies the allegations set forth in paragraph "25" of the plaintiff's Complaint as they are conclusions of law only to which no responsive pleading is required.

**AS AND FOR A FIRST SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-SIXTH: The plaintiff's Complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A SECOND SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-SEVENTH: Plaintiff has not been denied the full and safe access to all of the benefits, accommodation and services of the subject facility.

**AS AND FOR A THIRD SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-EIGHTH: Plaintiff lacks standing to bring this action and has failed to properly allege standing to assert any or all of the claims attempted to be alleged in the Complaint.

**AS AND FOR A FOURTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-NINTH: Plaintiff failed to provide any notice to Defendant of alleged violations prior to commencing this action.

**AS AND FOR A FIFTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTIETH: Injunctive relief must be denied to the extent that the allegations in the Complaint are moot.

**AS AND FOR A SIXTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-FIRST: The physical items identified by Plaintiff are not architectural barriers to access, and/or do not prevent enjoyment of the goods and services of the subject facility.

**AS AND FOR A SEVENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-SECOND: Defendant has not refused to take action or make reasonable modifications to remove any architectural barriers.

**AS AND FOR AN EIGHTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-THIRD: If any architectural barriers exist, the changes are not readily achievable without significant difficulty and/or expense, are not technically feasible, would result in significant loss and/or are impractical and/or impossible and/or are not otherwise required.

**AS AND FOR A NINTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-FOURTH: Plaintiff lacks standing to commence this action.

**AS AND FOR A TENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-FIFTH: The plaintiff's Complaint is barred, in whole or in part, by the applicable Statute of Limitations, administrative filing periods, the failure to satisfy statutory and/or failing to exhaust and/or abide by administrative prerequisites to the bringing of a legal action.

**AS AND FOR AN ELEVENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-SIXTH: Upon information and belief, plaintiff is not disabled within the meaning of the ADA. But assuming that plaintiff suffered from a qualifying disability, the plaintiff could not, with reasonable accommodation, enjoy the right or rights in question.

**AS AND FOR A TWELFTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-SEVENTH: To the extent that Plaintiff made any request for an accommodation, Defendant provided Plaintiff with a reasonable accommodation. To the extent Defendant denied an accommodation, such accommodation was not unreasonable and/or would have caused the defendant undue hardship.

**AS AND FOR A THIRTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-EIGHTH: The ADA provisions cited by plaintiff do not apply to Defendant.

**AS AND FOR A FOURTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

THIRTY-NINTH: If plaintiff has been subject to barriers, the removal of such barriers are not readily achievable or are not technically feasible.

**AS AND FOR A FIFTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTIETH: If it is determined that Defendant is responsible for the acts alleged in the Complaint, then plaintiff failed to take reasonable steps to mitigate his damages.

**AS AND FOR A SIXTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-FIRST: Plaintiff claims are barred, in whole or in part, by the doctrines of laches, waiver, estoppel, and unclean hands.

**AS AND FOR A SEVENTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-SECOND: The Americans with Disabilities Act is inapplicable.

**AS AND FOR AN EIGHTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-THIRD: The Administrative Code of the City of New York is inapplicable.

**AS AND FOR A NINETEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-FOURTH: Plaintiffs complaint is barred by the statute of limitations.



**AS AND FOR A TWENTIETH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-FIFTH: Plaintiff has not been denied the full and safe access to all of the benefits, accommodation and services of the subject facility.

**AS AND FOR A TWENTY-FIRST SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-SIXTH: Plaintiff lacks standing to bring this action and has failed to properly allege standing to assert any or all of the claims attempted to be alleged in the Complaint.

**AS AND FOR A TWENTY-SECOND SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-SEVENTH: Plaintiff failed to provide any notice to Defendant of alleged violations prior to commencing this action.

**AS AND FOR A TWENTY- THIRD SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-EIGHTH: Injunctive relief is inappropriate.

**AS AND FOR A TWENTY-FOURTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FORTY-NINTH: The physical items identified by plaintiff are not architectural barriers to access, or prevent enjoyment of the good and services of the subject facility.

**AS AND FOR A TWENTY-FIFTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTIETH: Defendant has not refused to take steps, nor refused to make reasonable modifications, to remove architectural barriers, if any.

**AS AND FOR A TWENTY-SIXTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTY-FIRST: Prior to the commencement of this lawsuit, plaintiff has never been, or attempted to enter, the property at issue.

**AS AND FOR A TWENTY-SEVENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTY-SECOND: The Plaintiff has failed to join indispensable parties to this action.

**AS AND FOR A TWENTY-EIGHTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTY-THIRD: The Complaint is barred, in whole or in part, by the failure to satisfy the statutory and administrative prerequisites to the bringing of a legal action.

**AS AND FOR A TWENTY-NINTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTY-FOURTH: The instant lawsuit should be barred under the legal theory of champerty.

**AS AND FOR A THIRTIETH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTY-FIFTH: The instant lawsuit should be barred under the legal theory of barratry.

**AS AND FOR A THIRTY-FIRST SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTY-SIXTH: The Court should take judicial notice of the eight other lawsuits that plaintiff Todd Kreisler, and his Attorney Adam Shore have brought in this court between October 2009 and June 2010. See Kreisler v. 60<sup>th</sup> Street Restaurant Corp. et al, 1:09-cv-08618-JSR; Kreisler v. McDonald's Corporation et al, 1:09-cv-09358-DAB; Kreisler v. Rodney Dangerfield, Inc. et al, 1:10-cv-03807-CM; Kreisler v. Chicken R US Corp. et al, 1:10-cv-03809-RMB; Kreisler v. Happy Taco A Inc. et al.; 1:10-cv-03810-RJS; Kreisler v. 1173-A Second Avenue Corp., 1:10-cv-03811-RJH; Kreisler v. Naima Corp. et al, 1:10-cv-04660-CM.

**AS AND FOR A THIRTY-SECOND SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTY-SEVENTH: Defendant reserves its right to assert further defenses should such further defenses become known to it during the litigation of this action.

**DEMAND FOR A JURY TRIAL**

FIFTY-EIGHTH: Defendant, FRESH SUBWAY 62, LLC, demands a trial by jury as to any and all issues raised in the plaintiff's Complaint and this answer which are triable before a jury.

That by reason of this action, Defendant has been and will be put to costs and expense including attorney's fees.

**WHEREFORE**, Defendant, FRESH SUBWAY 62, LLC, demands judgment dismissing the Complaint herein, and costs, fees and disbursements incurred in this action.

Dated: New York, New York  
August 11, 2010

Respectfully submitted,

**RUTHERFORD & CHRISTIE, LLP**

By: 

Lewis R. Silverman (LRS 9723)  
Attorneys for Defendant  
FRESH SUBWAY 62, LLC  
369 Lexington Avenue, 8<sup>th</sup> Floor  
New York, New York 10017  
(212) 599-5799  
Our File No: 1306.001

TO: LAW OFFICE OF ADAM T. SHORE  
Attorney for Plaintiff  
100 Park Avenue, Suite 1600  
New York, New York 10017  
(646) 476-4296  
Attention: Adam T. Shore, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on August 11, 2010, a copy of the within **ANSWER WITH JURY DEMAND AND NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION**, was furnished via Regular Mail to LAW OFFICE OF ADAM T. SHORE, 100 Park Avenue, Suite 1600, New York, New York 10017, Attn: Adam T. Shore, Esq.

**RUTHERFORD & CHRISTIE, LLP**

By: \_\_\_\_\_

Lewis R. Silverman (LRS 9723)